

The Texas Natural Resource Conservation Commission (commission) proposes new §§33.1, 33.3, 33.11, 33.13, 33.15, 33.17, 33.19, 33.21, 33.23, 33.25, 33.27, 33.29, 33.41, 33.43, 33.45, 33.47, 33.49, and 33.51, concerning consolidated permit processing. This action is part of the commission's implementation of House Bill (HB) 1228, 75th Legislature, 1997, which granted the commission authority to conduct consolidated permit processing and issue consolidated permits.

In addition, the commission is concurrently proposing conforming amendments and other changes to 30 TAC Chapter 39, concerning Public Notice. These amendments are published in this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULES

HB 1228 created a new Texas Water Code (TWC), Chapter 5, Subchapter J. The new statute creates a process for an applicant to request consolidated permit processing and the issuance of a consolidated permit. Federal operating permits are prohibited from consolidation. The statute establishes a voluntary program by which a plant, facility, or site can request consolidated permit processing. It provides for designation of a lead permitting program for coordination of application reviews, a consolidated permit hearing on all permits requested by the applicant, and issuance of one consolidated permit. It also allows the applicant to opt-out of the process before public notice of the opportunity to request a hearing and request separate processing either before or after referral to the State Office of Administrative Hearings, depending on certain, specified circumstances.

The statute provides that the renewal period for a consolidated permit is the shortest term set by any state or federal statute or rule governing one or more of the authorizations in the consolidated permit. It also clarifies the commission's authority to modify, amend, or renew existing permits containing authority from more than one permit program (including so-called "one-stop" permits).

The statute requires the fee for a consolidated permit to be computed as if the permits that are consolidated had been processed separately. However, TWC, §5.405, authorizes the commission to reduce the fee by rule for a consolidated permit if processing results in savings to the agency.

Finally, TWC, §5.406, as added by HB 1228, allows the commission to adopt rules to implement the program, including rules that provide for consolidated notice and procedures for issuing such permits.

The proposed rules are necessary for the implementation of the statute. They provide general procedural requirements governing consolidated processing of permit applications and the issuance of consolidated permits. The rules do not impact the voluntary nature of the program established by TWC, Chapter 5, Subchapter J. Applicants will retain the flexibility to determine if consolidated permitting would be consistent with their needs and processes.

The proposed rules also do not represent a fundamental change to the commission's permitting processes. Due to the limited and voluntary nature of TWC, Chapter 5, Subchapter J, as well as other statutory limitations, such as permit and notice requirements under federal programs for which the

commission is seeking authorization, implementation of this statute will be conducted under current commission rules and processes. Consequently, the proposed rules cover only those areas where the commission believes rules are necessary, such as clarifying notice requirements. Other details relating to implementation, such as the role of the designated lead coordinating office, will be addressed in guidance rather than by rule. This draft guidance document is available for review and input and may be obtained by contacting the agency at the number listed in the "SUBMITTAL OF COMMENTS" portion of this preamble.

Proposed new §33.1, concerning Purpose and Applicability, provides that the purpose of the proposed chapter is to implement the commission's authority under TWC, Chapter 5, Subchapter J. The section also sets forth the chapter's applicability. The rules would apply to plants, facilities, or sites required to have more than one permit issued by the commission. This language is identical to the statutory language, and the commission declines to define the terms in order to maintain as much flexibility, and allow as much participation, as possible. Under this approach, any entity that has to obtain more than one authorization can take part in the program. The proposed section also states that federal operating permits may not be consolidated. The proposed section implements TWC, §5.401.

Proposed new §33.3, concerning Definitions, defines consolidated permit as a permit issued under TWC, Chapter 5, Subchapter J, and that contains authorizations for activities in more than one program. The new section also provides a definition for component authorization, which describes an

authorization within a consolidated permit. These definitions are necessary for program implementation.

Proposed Subchapter B provides general provisions concerning consolidated permit processing and the issuance of consolidated permits. The subchapter includes provisions concerning renewals and changes to permits, as well as fee requirements. The general provisions are necessary to clarify that consolidated permit processing will be conducted, and consolidated permits will be issued, under current commission statutory authority and rules, unless otherwise provided by TWC, Chapter 5, Subchapter J.

Proposed new §33.11, concerning Issuance of Consolidated Permit, requires the commission to conduct coordinated application reviews if requested by an applicant. It also requires the commission to issue a consolidated permit if that is requested by an applicant. The proposed section implements TWC, §5.401.

Proposed new §33.13, concerning Applications for Consolidated Permits, requires applicants to use existing applications required under current commission rules.

Proposed new §33.15, concerning Fees for Consolidated Permit Processing, provides that the fee for a consolidated permit will be equal to the sum of the fees normally required if the applications were

processed separately. In addition, the section allows the executive director to reduce the fee if there are savings to the agency. The proposed new section implements TWC, §5.405.

Proposed new §33.17, concerning Public Notice, provides that all notice requirements applicable to each separate authorization being requested must be satisfied. The section also clarifies that if an applicant is required under commission rules to mail notice for any part of a consolidated public notice, then the applicant must fulfill all mailed notice requirements. This clarification is necessary to avoid any duplication of notice mailed to interested entities. Rules concerning notice are authorized by TWC, §5.406.

Proposed new §33.19, concerning Renewal of Consolidated Permits, provides that the renewal period for a consolidated permit is the shortest term for one or more of the authorizations sought in the consolidated permit. The section also provides for the separation of a consolidated permit at renewal if requested by an applicant. The proposed section requires renewal applications to be filed in a timely fashion. If they are not, the consolidated permit would expire in its entirety. Finally, the section provides that a component authorization that has been separated from a consolidated permit may be renewed for the full term provided by applicable law governing that authorization. The section includes provisions necessary to implement TWC, §5.403 and §5.404, as well as provisions necessary for program implementation.

Proposed new §33.21, concerning Amendment of a Consolidated Permit, and proposed new §33.23, concerning Transfer of a Consolidated Permit, provide requirements for amendments to, or transfers of, consolidated permits. Both sections provide that a consolidated permit can remain consolidated, or be separated at the request of the applicant, for purposes of processing amendments or transfers. In addition, the sections provide for the terms of any component authorizations that are separated at the request of the applicant. Both sections also provide that current commission rules apply to actions taken under the sections.

Proposed new §33.25, concerning Correction of a Consolidated Permit, provides that any corrections to consolidated permits will be conducted under 30 TAC §50.45, concerning Corrections to Permits.

Proposed new §33.27, concerning Consolidated Permit Denial, Suspension, and Revocation, provides that all denials, suspensions, and revocations will be administered under existing commission rules.

Proposed new §33.29, concerning Modification of a Consolidated Permit, provides that a modification of a consolidated permit, or any constituent part of that permit, will be administered under existing commission rules. In addition, any component authorization separated for purposes of modification will retain the term of the consolidated permit.

Proposed new §33.31, concerning Emergency or Temporary Orders, provides that the issuance of an emergency order or a temporary order will be administered under 30 TAC Chapter 35. The commission is proposing this new Chapter 35 in this edition of the *Texas Register*.

Proposed new Subchapter C, concerning Consolidated Permit Processing, sets forth procedural requirements for processing consolidated applications and issuing consolidated permits.

Proposed new §33.41, concerning Pre-submittal Conference, provides for a preliminary meeting between an applicant considering consolidated permitting and commission staff to discuss the consolidated permit process and various options that are available to applicants. The conference is not mandatory; however, the commission recommends it to help potential applicants determine if participation in this voluntary program would suit their needs and requirements. The conference would cover a variety of topics, identify important issues, and assist a potential applicant with the decision of whether to participate in the consolidated permitting process.

Proposed new §33.43, concerning Intent to File Applications for Consolidated Permit Processing and a Consolidated Permit, provides procedures for filing applications for consolidated processing with the commission. The section requires a letter of intent and prescribes its minimum contents. The section also contains the requirement that applications be filed within a 30-day time period, as required by TWC, §5.401. The section also provides that applications will not be processed until all have been

received, and provides for the return of an incomplete set of applications by the executive director.

These procedural requirements are necessary for processing and issuing consolidated permits.

Proposed new §33.45, concerning Separation by Executive Director, provides for separate processing of consolidated applications at the direction of the executive director. The executive director may require separate processing if an applicant has submitted an incomplete application or failed to respond as requested to any notices of deficiency. The section implements TWC, §5.401.

Proposed new §33.47, concerning Request for Separate Processing Before Public Notice of Opportunity to Request a Hearing, authorizes an applicant to request separation of applications before public notification of the opportunity to request a hearing. The section provides that these requests must be filed with the executive director. The section implements TWC, §5.402(a).

Proposed new §33.49, concerning Separate Processing After Notice of Opportunity to Request a Hearing and Before Referral to SOAH, authorizes the executive director to separate applications after notice is issued but before referral to SOAH, if an applicant demonstrates good cause. Good cause is defined by TWC, §5.402(b) and the proposed rule as a change in a statutory requirement, or a substantial change in factual conditions surrounding the applications. The section also prescribes requirements concerning the request for separation that are necessary for implementation, and the disposition of any hearing requests that were received on the consolidated applications. Finally, the

section provides for renotification of the separate applications in accordance with commission public notice rules.

Proposed new §33.51, concerning Separate Processing After Referral to SOAH, authorizes an applicant to have applications processed separately after the consolidated applications have been referred to SOAH. The applicant must comply with commission rules relating to the withdrawal of an application. This section implements TWC, §5.402(c).

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be fiscal implications as a result of administration or enforcement of the sections. The effect on state government will be a minor reduction in cost associated with the consolidation of separate permitting processes, particularly public hearings. Some costs may be incurred in the initial development of new procedures for consolidated permits, but these costs are not anticipated to outweigh anticipated savings. No significant effects are anticipated for local governments, except some local governments may elect to acquire consolidated permits for regulated activities and would be similarly affected as any other party.

#### PUBLIC BENEFIT

Mr. Minick has also determined that, for the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be

improvement in and simplification of the process of issuing permits under different program requirements, more cost-effective management of permitted activities, and enhanced opportunities for public participation in the permitting process. Generally, costs to affected parties are not anticipated to increase and could, in fact, decrease as a result of the proposed rules. Participation in a consolidated permit process is voluntary and there are no economic costs anticipated to any person, including small business, required to comply with the sections as proposed.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it prescribes limited procedural requirements governing a voluntary program. In addition, this action is expressly authorized by state statute, TWC, Chapter 5, Subchapter J.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to implement the statutory provisions of TWC, Chapter 5, Subchapter J, concerning consolidated permit processing. The rules will substantially advance this purpose by providing specific provisions on

these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in the Coastal Coordination Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the Coastal Management Program (CMP) be considered during the rulemaking process.

The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22, and found that the proposed rules are consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the administrative policies and the policies for specific activities related to: construction and operation or solid waste treatment, storage, and disposal facilities; and discharge of municipal and industrial wastewater to coastal areas. Promulgation and enforcement of these proposed rules is consistent with the applicable CMP goals and policies because the proposed rules have no impact on existing commission rules concerning affected activities. They establish a voluntary program that will utilize already existing commission rules and practices to the maximum extent required. Promulgation and

enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because they will have no impact on existing commission rules concerning affected activities.

The commission invites public comment on the consistency of the proposed rules with the CMP.

#### PUBLIC HEARING

A public hearing on this proposal will be held August 17, 1998, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97170-033-AD. Comments must be received by 5:00 p.m., August 17, 1998, For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.401 et.seq., which establishes the commission's authority concerning consolidated permit processing. Other relevant sections under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed new sections implement TWC, 5.401 et. seq.

## CHAPTER 33

### CONSOLIDATED PERMIT PROCESSING

#### SUBCHAPTER A : PURPOSE AND APPLICABILITY

##### §33.1, §33.3

##### §33.1. Purpose and Applicability.

(a) The purpose of this chapter is to implement the commission's authority under Texas Water Code, Chapter 5, Subchapter J, to conduct coordinated permit processing and issue one consolidated permit.

(b) This chapter applies to any plant, facility, or site that is required to have more than one permit issued by the commission and that files applications with the commission under Texas Water Code, Chapter 5, Subchapter J. This chapter sets forth the standards and requirements for applications and actions concerning consolidated permits and amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of those permits.

(c) A federal operating permit governed by the requirements of Texas Health and Safety Code, §§382.054-382.0543, may not be consolidated with other permits under this chapter.

**§33.3. Definitions.**

The following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Consolidated permit** - A permit issued under Texas Water Code, Chapter 5, Subchapter J, and this chapter, and that contains authorizations for activities in more than one program.

(2) **Component authorization** - An authorization within a consolidated permit that would normally be issued as an individual authorization under the requirements of applicable law governing operations at a facility, plant, or site.

## **SUBCHAPTER B : GENERAL PROVISIONS**

**§§33.11, 33.13, 33.15, 33.17, 33.19, 33.21, 33.23, 33.25, 33.27, 33.29, 33.31**

### **STATUTORY AUTHORITY**

The new sections are proposed under Texas Water Code, §5.401 et.seq., which establishes the commission's authority concerning consolidated permit processing. Other relevant sections under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed new sections implement Texas Water Code, §5.401 et.seq.

### **§33.11. Issuance of Consolidated Permit.**

(a) If a plant, facility, or site is required to have more than one permit issued by the commission, and the applications for all permits are filed within a 30-day period, the commission, on request of the applicant, shall conduct coordinated application reviews and one hearing on all permits requested to be consolidated by the applicant. The commission may issue one consolidated permit.

(b) The commission shall issue one consolidated permit upon request of an applicant meeting the requirements of this chapter.

**§33.13. Applications for Consolidated Permits.**

An applicant shall use existing applications required under commission rules for all of the authorizations sought in the consolidated permit.

**§33.15. Fees for Consolidated Permit Processing.**

A fee for a consolidated permit shall be equal to the sum of the fees that would be required if each application for a requested authorization was processed separately. The executive director may reduce the fee for a consolidated permit if he finds that consolidated processing of an application will result in savings to the agency.

**§33.17. Public Notice.**

(a) As provided by Chapter 39, Subchapter G of this title (relating to Public Notice for Applications for Consolidated Permits), all notice requirements that apply to each separate authorization must be satisfied when an applicant requests combined public notices of consolidated permits.

(b) If an applicant is required to mail notice under Chapter 39 of this title (relating to Public Notice), Chapter 305 of this title (relating to Consolidated Permits), or Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), for any part of a consolidated public notice, the applicant shall fulfill those mailed notice requirements.

**§33.19. Renewal of Consolidated Permits.**

(a) The renewal period for a consolidated permit is the shortest term set by any state or federal statute or rule governing one or more of the authorizations in the consolidated permit.

(b) A consolidated permit may be renewed as a consolidated permit; or may be separated at the request of the applicant and the applications processed separately. Consolidated permits shall be subject to the renewal requirements of applicable laws and commission rules governing operations at the facility, plant, or site.

(c) A permit issued before and effective on September 1, 1997, that authorizes more than one permit program, may be renewed as a consolidated permit, or, upon request of the applicant, may be separated by programs and the permits processed separately.

(d) An applicant shall submit permit renewal applications in a timely fashion, as required in commission rules. Failure to submit permit renewal applications in a timely fashion shall cause a consolidated permit to expire in its entirety.

(e) If a component authorization has been separated from a consolidated permit when amended, transferred, or modified, as provided by this chapter, it may be renewed for the full term provided by applicable law governing that authorization.

**§33.21. Amendment of a Consolidated Permit.**

(a) A consolidated permit may be amended as a consolidated permit or, upon request of an applicant, separated by program and the permits processed separately. A component authorization that is separated from a consolidated permit for amendment shall retain the same term as the consolidated permit, unless the applicant requests a change in the term as part of a major amendment.

(b) A consolidated permit shall be amended under all applicable commission rules concerning amendments for the programs in the consolidated permit.

**§33.23. Transfer of a Consolidated Permit.**

(a) A consolidated permit may be transferred as a consolidated permit or, upon request of the applicant, separated for the purposes of transferring authorizations. A component authorization that is separated from a consolidated permit for transfer shall retain the same term as the consolidated permit.

(b) A consolidated permit, or any of its component authorizations, shall be transferred under all applicable transfer rules required for the programs in the consolidated permit.

**§33.25. Correction of a Consolidated Permit.**

A consolidated permit, or a component authorization part of that permit, shall be corrected under §50.45 of this title (relating to Corrections to Permits).

**§33.27. Consolidated Permit Denial, Suspension, and Revocation.**

A consolidated permit, or any component authorization of that permit, shall be denied, suspended, or revoked under all applicable rules required for the programs in the consolidated permit.

**§33.29. Modification of a Consolidated Permit.**

A consolidated permit, or any component authorization of that permit, shall be modified under all applicable rules required for the programs in the consolidated permit. A component authorization that is separated from a consolidated permit for modification shall retain the same term as the consolidated permit.

**§33.31. Emergency or Temporary Orders.**

An emergency or temporary order concerning a consolidated permit shall be issued under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

## **SUBCHAPTER C : CONSOLIDATED PERMIT PROCESSING**

**§§33.41, 33.43, 33.45, 33.47, 33.49, 33.51**

### **STATUTORY AUTHORITY**

The new sections are proposed under Texas Water Code, §5.401 et.seq., which establishes the commission's authority concerning consolidated permit processing. Other relevant sections under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed new sections implement Texas Water Code, §5.401 et.seq.

### **§33.41. Pre-submittal Conference.**

An applicant considering the submission of applications for coordinated reviews and one hearing, or for a consolidated permit, may request a pre-submittal conference to determine, at a minimum, the types of permits to be consolidated, timelines for the submission of applications, and notice and hearing requirements. A request for a pre-submittal conference may be made to the executive director.

**§33.43. Intent to File Applications for Consolidated Permit Processing and a Consolidated Permit.**

(a) An applicant shall notify the commission of the intent to request consolidated permit processing or a consolidated permit by submitting a letter of intent to the executive director. The letter of intent must contain at least the following:

(1) the applicant's name;

(2) the applicant's address;

(3) the location of the facility;

(4) the number and types of authorizations to be consolidated;

(5) the types of notices the applicant wishes to combine; and

(6) the beginning and ending date of the time period, not to exceed 30 days, during which the applicant will submit all applications intended for consolidation.

(b) All applications received by the executive director will be held and not processed until the ending date identified by the applicant under subsection (a)(6) of this section. This does not exempt the applicant from the timely submittal of permit renewal applications as required in Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), or Chapter 336 of this title (relating to Radiation Rules). All applications received by that date are deemed as officially received on that date by the executive director for the purpose of processing the applications.

(c) If an applicant has not submitted all of the applications by the deadline specified in subsection (a)(6) of this section, the executive director shall return all of the applications to the applicant unless the applicant has amended its letter of intent. The letter of intent may be amended by submitting a revised letter of intent to the executive director. Renewal applications will not be returned, but shall be processed separately.

**§33.45. Separation by Executive Director.**

(a) The executive director may require separate processing of consolidated applications, or may return one or more applications, if the executive director determines:

(1) that the applicant has submitted an incomplete application; or

(2) if the applicant does not respond as requested to notices of deficiency.

(b) The executive director shall notify the applicant of any decision concerning applications under this section. This notice shall include the reasons for the executive director's decision on the applications.

**§33.47. Request for Separate Processing Before Public Notice of Opportunity to Request a Hearing.**

(a) An applicant may request that consolidated applications be processed separately at any time before mailing or publishing any public notice of the opportunity to request a hearing.

(b) Requests shall be filed with the executive director in a timely fashion and include at least the applicant's name and a list of the applications to be separated.

**§33.49. Separate Processing After Notice of Opportunity to Request a Hearing and Before Referral to SOAH.**

(a) The executive director may separate the applications for processing at any time after the issuance of any notice of opportunity to request a hearing, but before referral of the matter to SOAH.

upon demonstration of good cause by the applicant. For purposes of this section, good cause includes, but is not limited to:

(1) a change in the statutory or regulatory requirements governing a permit; or

(2) a substantial change in the factual circumstances surrounding the applications for permits.

(b) An applicant shall file the request for separate processing with the executive director and provide copies to affected program offices. The request shall include the following:

(1) the applicant's name;

(2) a list of the applications to be separated; and

(3) the demonstration of good cause.

(c) Upon determination by the executive director that there is good cause for the separate processing of permit applications, the chief clerk shall notify anyone who submitted comment or a hearing request on any combined notice of the executive director's decision. The applicant shall re-notice the separate applications in accordance with applicable commission notice requirements.

(d) Any hearing requests received on the consolidated applications before the applicant requested separate processing shall be held by the chief clerk. The chief clerk shall process those requests along with all additional comments and hearing requests received for each of the separate applications after those applications are renoticed under subsection (c) of this section.

**§33.51. Separate Processing After Referral to SOAH.**

An applicant may have applications processed separately after an application has been referred to SOAH. An applicant shall show compliance with §80.25 of this title (relating to Withdrawing the Application) in order to have the applications processed separately.

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§39.1, 39.5, and 39.251, concerning public notice, and new §39.401, concerning public notice for applications for consolidated permits. This action is part of the commission's implementation of House Bill (HB) 1228, 75th Legislature, 1997, which granted the commission authority to conduct consolidated permit processing and issue consolidated permits. It also includes minor corrections and clarifications to preexisting rules.

In addition, the commission is concurrently proposing a new 30 TAC Chapter 33, concerning Consolidated Permit Processing. The new chapter is published in this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULES

HB 1228 created a new Texas Water Code (TWC), Chapter 5, Subchapter J. The new statute creates a process for an applicant to request consolidated permit processing and the issuance of a consolidated permit. Federal operating permits are prohibited from consolidation. The statute establishes a voluntary program by which a plant, facility, or site can request consolidated permit processing. It provides for designation of a lead permitting program for coordination of application reviews, a consolidated permit hearing on all permits requested by the applicant, and issuance of one consolidated permit. It also allows the commission to adopt rules to implement the program, including rules that provide for consolidated notice and procedures for issuing such permits.

These proposed rules are necessary to implement the notice provisions of the statute and do not represent a fundamental change to the commission's notice processes. Due to the limited and voluntary nature of TWC, Chapter 5, Subchapter J, as well as other statutory limitations, such as permit and notice requirements under federal programs for which the commission is seeking authorization, implementation of HB 1228 will be conducted under current commission rules and processes.

The proposed rules also include corrections to certain provisions in Chapter 39. These are proposed for clarification purposes.

The proposed amendment to §39.1, concerning Applicability, provides that Chapter 39 applies to applications for consolidated permit processing.

The proposed amendment to §39.5, concerning General Provisions, removes redundant language concerning the publication of newspaper notice. This change is nonsubstantive, and its intent is to correct a mistake in the existing rule.

The proposed amendment to §39.251, concerning Application for Injection Well Permit, clarifies that the rules apply to both existing and proposed facilities.

Proposed new §39.401, concerning Public Notice for Applications for Consolidated Permits, provides that combined notices for applications consolidated under Texas Water Code, Chapter 5, Subchapter J,

and Chapter 33, will be given only when requested by an applicant and when the combined notice satisfies all statutory and regulatory requirements applicable if each application had been processed separately. This provision clarifies that all applicable notice requirements must be met when an applicant requests consolidated permit processing. The commission notes that combined notices are not mandatory, and that an applicant retains the ability to do separate notices if it prefers.

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be fiscal implications as a result of administration or enforcement of the sections. The effect on state government will be a minor reduction in cost associated with the consolidation of separate permitting processes, particularly public hearings. Some costs may be incurred in the initial development of new procedures for consolidated permits, but these costs are not anticipated to outweigh anticipated savings. No significant effects are anticipated for local governments, except some local governments may elect to acquire consolidated permits for regulated activities and would be similarly affected as any other party.

#### PUBLIC BENEFIT

Mr. Minick has also determined that, for the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvement in and simplification of the process of issuing permits under different program requirements, more cost-effective management of permitted activities, and enhanced opportunities for

public participation in the permitting process. Generally, costs to affected parties are not anticipated to increase and could, in fact, decrease as a result of the proposed rules. Participation in a consolidated permit process is voluntary and there are no economic costs anticipated to any person, including small business, required to comply with the sections as proposed.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it prescribes limited procedural requirements governing a voluntary program, and it provides for minor clarifications to existing rules. In addition, the provisions concerning notice for consolidated permits are expressly authorized by state statute, TWC, Chapter 5, Subchapter J.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to implement the statutory provisions of TWC, Chapter 5, Subchapter J, concerning consolidated permit processing, and to make necessary clarifications to existing rules. The rules will substantially advance this purpose by providing specific provisions on these matters. Promulgation and enforcement

of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. These rules concern procedural requirements of the agency relating to public notice. Therefore, the proposed rules are not subject to the CMP.

#### PUBLIC HEARING

A public hearing on this proposal will be held August 17, 1998, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97170-033-AD. Comments must be received by 5:00 p.m., August 17, 1998. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The amendments are proposed under the following sections of the TWC: §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §5.401 et.seq., which establishes the commission's authority concerning consolidated permit processing. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed amendments implement TWC, §§5.103, 5.105, and 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

**CHAPTER 39**

**PUBLIC NOTICE**

**SUBCHAPTER A : APPLICABILITY AND GENERAL PROVISIONS**

**§39.1, §39.5**

**§39.1. Applicability.**

This chapter applies to:

(1) - (7) (No change.)

(8) applications for consolidated permit processing and consolidated permits processed under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing).

**§39.5. General Provisions.**

(a) - (f) (No change.)

(g) When this chapter requires notice to be published according to this subsection, the applicant shall publish notice in a newspaper of the largest general circulation that is published in the county in

which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, and the application concerns an application for a new or amended municipal solid waste permit, and publication of notice of intent, notice of draft permit, or notice of hearing, then the applicant shall publish notice in a newspaper of the largest general circulation [that is published] in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located, and such notice may be satisfied by one publication if the publishing newspaper meets both circulation requirements. This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.

(h) (No change.)

## **SUBCHAPTER E : PUBLIC NOTICE OF OTHER SPECIFIC APPLICATIONS**

### **§39.251**

#### **STATUTORY AUTHORITY**

The amendment is proposed under Texas Water Code, §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, and 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

#### **§39.251. Application for Injection Well Permit.**

(a) - (c) (No change.)

(d) Notice of draft permit.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the [proposed] facility is located.

(2) - (4) (No change.)

(e) - (f) (No change.)

**SUBCHAPTER G : PUBLIC NOTICE FOR APPLICATIONS  
FOR CONSOLIDATED PERMITS**

**§39.401**

**STATUTORY AUTHORITY**

The new section is proposed under the following sections of the TWC: §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §5.401 et.seq., which establishes the commission's authority concerning consolidated permit processing. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed new section implements Texas Water Code, §§5.103, 5.105, and 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

**§39.401. Public Notice for Applications for Consolidated Permits.**

Combined public notices shall be given for applications consolidated under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing) only when:

- (1) combined notice is requested by the applicant; and

(2) combined notice satisfies all statutory and regulatory requirements that would apply if each application had been processed separately, including, without limitation, all requirements for notice content, publication, mailing, broadcasting, and the posting of signs.